

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ANTHONY M. ST. LAURENT, SR.

v.

C.A. No. 00-438T

UNITED STATES OF AMERICA

MEMORANDUM AND ORDER

Ernest C. Torres, Chief Judge.

The petitioner, Anthony M. St. Laurent, Sr., seeks relief from sentence pursuant to 28 U.S.C. § 2255. For the following reasons, the motion is summarily denied and dismissed. See Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

I. Facts and Background

St. Laurent pled guilty to one count of conspiracy to use extortionate means to collect extensions of credit and one count of using extortion to collect credit, both in violation of 18 U.S.C. §§ 894 and 2. On each count, the court sentenced St. Laurent to concurrent sentences of 70-months imprisonment and three-years supervised release.

At sentencing, the court advised St. Laurent of his right pursue an appeal of his sentence and the time period for so doing. St. Laurent acknowledged that he understood the court's admonitions. No notice of appeal was filed. In fact, on the day of sentencing, defense counsel, in writing, informed the district court clerk that he had discussed the possibility of an appeal with his client and that St. Laurent did not wish to appeal the sentence imposed.

II. Discussion.

In support of his § 2255 motion, St. Laurent contends that the extortion charges to which he admitted guilt were state crimes rather than federal offenses and, consequently, were charges over

which the federal district court lacked subject matter and territorial jurisdiction. Further, petitioner argues that 18 U.S.C. § 894 is invalid for the reason that it was not enacted in accordance with the requirements of 44 U.S.C. § 1505. Moreover, St. Laurent asserts that the indictment was deficient in that it did not allege that he committed the offenses within the “Federal United States”. For these reasons, St. Laurent contends that the government, in prosecuting petitioner, violated his rights under the Fifth, Sixth, Eighth, Ninth and Tenth Amendments to the United States Constitution.

St. Laurent contends that defense counsel failed to provide effective assistance throughout the criminal proceedings because the attorney failed to raise the above-enumerated “jurisdictional” issues and permitted petitioner to plead guilty. Also, St. Laurent faults his attorney for allegedly failing to object to the two-point offense level increase imposed pursuant to U.S.S.G. § 3B1.1(c) for petitioner’s “leadership” role in the criminal activity. Moreover, St. Laurent argues that the Supreme Court’s recent decision in Apprendi v. New Jersey, ___ U.S. ___, 120 S.Ct. 2348 (2000), requires that he be resentenced without reference to § 3B1.1.¹

The grounds proffered by St. Laurent in support of his § 2255 are without merit. In fact, petitioner’s claims are patently frivolous. St. Laurent was indicted for and pled guilty to violation of 18 U.S.C. §§ 894 and 2. Violations of federal criminal statutes are matters over which the district court has jurisdiction. 18 U.S.C. § 3231. The indictment alleged that the federal offenses occurred, inter alia, within the District of Rhode Island. St. Laurent cannot seriously contend that Rhode Island

¹ In his memorandum in support of his § 2255 motion, St. Laurent also asserts that his plea was neither knowing nor voluntary. Specifically, petitioner contends that he was unaware that if he had proceeded to trial the government would have been required to prove all elements of the charged offenses beyond a reasonable doubt and that he was unaware of the probable length of his sentence. In fact, St. Laurent’s contentions are contradicted by the plea agreement and the assurances to the contrary that he made, under oath, to the court during the plea hearing.

is not within the United States.

Further, St. Laurent has failed to demonstrate that § 894 was not validly enacted. In fact, petitioner's reliance on 18 U.S.C. § 1505(a) is misplaced. Section 1505(a) pertains to publication of executive orders and similar documents in the Federal Register. The provision is inapplicable to federal criminal statutes. See United States v. Schiefen, 139 F.3d 638 (8th Cir. 1998).

Since petitioner's claims of lack of jurisdiction and statutory infirmity are without merit, former defense counsel cannot be faulted for failing to raise these issues. Similarly, the government's prosecution was neither violative of petitioner's constitutional rights nor otherwise inappropriate.

St. Laurent faults defense counsel for allegedly failing to assert an objection to the two-point increase in his offense level imposed pursuant to U.S.S.G. § 3B1.1(c). In fact, defense counsel did object to the increase. At sentencing, the court addressed the objection and concluded that a two-level increase pursuant to § 3B1.1(c) was warranted due to St. Laurent's leadership role in the criminal activity. The court's application of the sentencing guidelines will not be revisited in the instant § 2255 proceeding. See Knight v. United States, 37 F.3d 769 (1st Cir. 1994).

Finally, St. Laurent's reliance on Apprendi is misplaced. In Apprendi, the Supreme Court held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." ___ U.S. at ___, 120 S.Ct. at 2362-63. In substance, petitioner contends that the two-point increase in his offense level imposed pursuant to U.S.S.G. § 3B1.1(c) is invalid under Apprendi because the indictment did not allege, and the government was not required to prove beyond a reasonable doubt, that he was a leader or organizer of the criminal activity. Inclusive of the two-point increase, St.

Laurent's offense level was determined to be 21, which, when coupled with his criminal history category (V), resulted in a guideline sentencing range of 70-87 months. If St. Laurent had not received the two-point increase, the applicable sentencing range under the guidelines would have been 57-71 months.

However, the sentence imposed on each count, 70 months, was within the 20-year maximum term of imprisonment specified by statute. 18 U.S.C. § 894(a). Since the sentence imposed is less than the statutory maximum, there is no Apprendi issue. See, e.g., United States v. Doggett, ___ F.3d ___, 2000 WL 1481160 (5th Cir. 2000) (Apprendi is limited to facts which increase the penalty beyond the statutory maximum; it does not effect sentencing guideline calculations within the statutory range); Talbott v. Indiana, ___ F.3d ___, 2000 WL 128166 (7th Cir. 2000) (same).

III. Conclusion.

For the above reasons, the petitioner's § 2255 motion is denied and dismissed.

IT IS SO ORDERED.

Ernest C. Torres
Chief Judge

October , 2000